

Shangri-La Homes, LLC,

Petitioner

\* Before the Zoning Board of  
\* Howard County  
\* Zoning Board Case No. 1100-M

\* \* \* \* \*

### **DECISION AND ORDER**

On October 16, 2012, the Zoning Board of Howard County, Maryland considered the petition of Shangri-La Homes, LLC for an amendment to the Zoning Map of Howard County so as reclassify from the R-20 to the R-SI (Residential: Senior-Institutional) Zoning District 1.89 acres of land located on the northeast side of MD 103 (Montgomery Road) approximately 1,500 feet southeast of Long Gate Parkway. The proposed zoning map amendment was submitted with a Documented Site Plan. The subject property is identified as Tax Map 31, Grid 1, Parcel 579, lot 4 in the Second Election District of Howard County.

The notice of hearing was advertised, the subject property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising and mailing to adjoining property owners which were entered into the record. Pursuant to the Zoning Board's Rules of Procedures, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning, and the Planning Board's recommendation, were entered or incorporated into the record of the hearing. Both the Department of Planning and Zoning and the Planning Board recommended approval of the petition.

The Petitioner was represented by Thomas M. Meachum, Esq. Eileen Powers, Esquire, the Zoning Counsel, appeared pursuant to Section 16.1000 of the Howard County Code, to support the comprehensive zoning of the subject property. There was no individual opposition to the petition.

After careful evaluation of all the information presented, the Zoning Board of Howard County makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. The Petitioner requests rezoning of his property from the R-20 Zoning District to the R-SI Zoning District. The petition was filed with a documented site plan for approval of the assisted living facility which already exists on the subject property. The documented site plan proposes no additional buildings and proposes 5 additional parking spaces only if they are required by Howard County. All of the testimony in support of the petition was presented by Dr. Pradip Ghosh, the principal of the Petitioner and Mr. Michael Adcock, the engineer for the project. In addition, a number of documents in support of the request for rezoning were introduced into the record of the hearing.

2. The Petitioner's request for rezoning is based on mistake in the last comprehensive zoning of the subject property. The testimony and documentary evidence produced revealed the undisputed facts as found below.

3. Nursing Homes and residential care facilities were, prior to July 12, 2001, uses permitted by special exception in the R-20 District upon approval by the Board of Appeals. The facility currently existing on the subject property was originally approved in 1990 by the Howard County Board of Appeals in BA 89-51E pursuant to these

previously existing zoning regulations. See Applicant's Exhibit 1. After that approval expired, the petitioner received a second approval from the Board of Appeals in 1995 in BA 94-16E. See Applicant's Exhibit 2.

4. Council Bill 11-2001, which became effective July 12, 2001 (See Applicant's Exhibit 9), continued to allow nursing homes and residential care facilities such as Petitioner's assisted care facility in the R-20 District by conditional use but limited those uses to a maximum of 16 beds.

5. Council Bill 11-2001, contained a "grandfathering" clause which provided that conditional use applications filed on or before March 5, 2001, which Petitioner's application had been, shall be subject to the regulations in effect prior to Council Bill 11-2001.

6. Petitioner applied for its building permit for a 45 bed facility on February 26, 2002 and the permit was issued on February 21, 2003. See Applicant's Exhibit 7. Dr. Ghosh indicated that he was under construction pursuant to these building permits at the time of the 2004 Comprehensive Zoning in April of 2004.

7. The 2004 Comprehensive Zoning Plan continued the R-20 zoning on the subject property despite the fact that Council Bill 11-2001 only permitted 16 bed nursing homes/group care facilities to be approved by the Board of Appeals in the R-20 District by conditional use, and that restriction was continued in the Zoning regulations passed as part of the 2004 Comprehensive Zoning.

8. The 45 bed nursing home/residential care/assisted living facility was fully constructed and received its use and occupancy permit from Howard County on May 30,



2006. (See Applicant's Exhibit 8). Dr. Ghosh testified that although the facility only received approval for 45 beds from the Board of Appeals in the 1995 approval, it was built to accommodate 60 beds based on need. He also testified that there is a need for 60 beds and that the facility has been at capacity for 2 years.

9. In 2010, when the Petitioner inquired of the Department of Planning and Zoning as to how they could gain approval of an expansion from 45 to 60 beds, they were informed and first became aware at that time that they could not be approved for an expansion because the R-20 District only permitted a facility with a maximum of 16 beds.

10. The Petitioner applied for and was denied an application for a nonconforming use approval to permit the expansion in BA 11-002N.

11. The Petitioner requests the rezoning to the R-SI Zoning District so as to allow the expansion of the current 45 bed facility to permit 60 beds. Nursing homes/residential care facilities, unrestricted as to the number of beds, are permitted uses as a matter of right in the R-SI Zoning District. The proposed documented site plan proposes the existing use but with 60 beds and also shows the necessary changes to accommodate the 60 bed facility, particularly the addition of 5 more parking spaces as required by the parking requirements of the Howard County Zoning Regulations.

12. The Petitioner presented testimony that the 5 extra parking spaces were not needed. The parking study supporting this conclusion was presented to the Department of Planning and Zoning and it was also offered as an exhibit to the Zoning Board. Mr. Ghosh testified that the average age of the residents at the facility was 85 years old, and that only one resident presently living at the facility drives a car. It was further indicated

that the employees work in shifts so all the employees do not park at the facility at the same time, and that currently 3 parking spaces go unused. Mr. Adcock testified that if 5 new parking spaces had to be added, the new storm water management regulations would be brought into effect, which would be very expensive in terms of compliance.

While the Board finds that there is merit in Petitioner's request to not be required to construct the additional 5 parking spaces, the Board notes that it does not have the authority to provide relief from this requirement but that it would be possible for the property owner to seek relief either from the Board of Appeals through a variance application or from the Department of Planning and Zoning through approval of an alternative parking plan in the site development plan approval process. The Board's determination that it does not have authority to alter the parking requirements in this decision should not be interpreted as preventing the granting of relief for the possibly unnecessary parking spaces via one of the processes noted above.

13. The Petitioner also presented page 146 of the 2012 Howard County General Plan, which "recognized the County's support of continuing care housing and services must be maintained."

14. The Department of Planning and Zoning in its Technical Staff Report found that during the processing period of the Petitioner's site development plan and building permit for the facility, which occurred after the effective date of Council Bill 11-2001 but before the 2004 Comprehensive Zoning, "nothing was occurring on the Property which would have alerted the County Council that a change in zoning was need to accommodate the use which was being processed; therefore, the Council mistakenly retained the R-20 zoning in the 2004 Comprehensive Zoning Plan which became effective on April 13,

2004.” The Department of Planning and Zoning further found that “whatever assumption the Council made about the Property and its use in 2004 has been shown to be mistaken over time since the construction of the facility.” The Department of Planning and Zoning further noted that “the number of existing beds exceeds the number currently permitted and the Facility does not qualify for a nonconforming use or expansion of a nonconforming use.”

15. The Zoning Counsel acknowledged in her presentation that there were facts in the record which could support a finding of mistake.

16. The Board, based on the undisputed facts above, finds as to the contention of mistake in comprehensive zoning:

- a. The Board finds that the Petitioner presented substantial evidence that the County Council was not aware in 2004 that the continued R-20 zoning of the subject property would not accommodate the expansion of the assisted care facility on the subject property and would “freeze” the permitted number of beds to 45 based on the changes made in Council Bill 11-2001.
- b. That while the 45 bed facility could continue under R-20 zoning, it was not a nonconforming use because the use itself was still permitted in the R-20 District although restricted as to intensity/number of beds.
- c. That the Petitioner’s subsequent efforts to seek expansion of the facility from 45 to 60 beds revealed the inability of the facility to expand under the current R-20 zoning, and the need for R-SI zoning to accomplish that expansion.

17. The Petitioner presented testimony and documentary evidence to support its contention that R-SI zoning was appropriate for the subject property since it would enable the already existing use to expand from 45 to 60 beds in the current building footprint.



18. The Department of Planning and Zoning found that the Petitioner's proposed documented site plan complies with the applicable criteria for documented site plans in Section 100g.2.d. of the Howard County Zoning regulations, in that it shows the development of the already existing assisted living facility on the subject property which:

a. Is considered to be compatible with existing and potential land uses of the surrounding areas which include residential and institutional uses;

b. Reflects development which has been approved with the noted site development plan, thereby implicitly protecting the environmental integrity of the subject property and adjoining areas in the location and design of site improvements;

c. Shows the existing access points that have been determined to be safe by the State Highway Administration; and

d. Is compatible with the Howard County General Plan's policy of ensuring the provision of an adequate supply of continuing care housing and services for the elderly.

#### CONCLUSIONS OF LAW

1. The Petitioner, as one seeking a piecemeal zoning reclassification, has the burden of demonstrating mistake in the last comprehensive zoning of the subject property and/or change in the character of the neighborhood of the subject property since the last comprehensive zoning. If this burden is met, the Board is permitted, but not compelled to grant the rezoning request.

2. There is sufficient evidence in the record regarding mistake in the 2004 Comprehensive Zoning of the subject property in the R-20 District, as identified in the Department of Planning and Zoning's Technical Staff Report and the Board's findings of fact 2-10 and 14-16 above, to overcome the strong presumption of correctness attached to that comprehensive zoning.

3. Petitioner has met the onerous burden of proving strong evidence of mistake in the comprehensive zoning of the subject property sufficient enough to permit the requested rezoning.

4. The Petitioner has presented sufficient evidence for the Board to conclude that the appropriate zoning category for the subject property is the R-SI Zoning District based on the Board's findings of fact 11, 13 and 17 above, and the Board concludes that R-SI is the appropriate zoning for the subject property.

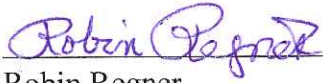
5. The Petitioner met all the criteria contained in Section 100.G.2.d of the Zoning Regulations for the approval of the documented site plan for the existing use of the assisted living facility as shown on the documented site plan based on the Board's finding of fact 18 above.

For the foregoing reasons, the Zoning Board of Howard County, on this 20<sup>th</sup> day of December, 2012, hereby **GRANTS** the Petitioner's request for rezoning of the 1.89 acre subject property from the R-20 to the R-SI Zoning District, and **GRANTS** approval of the proposed documented site plan as requested by the Petitioner.



ATTEST:

ZONING BOARD OF HOWARD COUNTY



Robin Regner  
Administrative Assistant

DID NOT PARTICIPATE

Courtney Watson, Chairperson

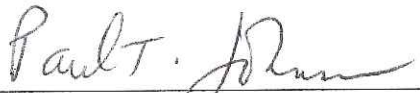


Calvin Ball, Vice Chairperson


PREPARED BY HOWARD COUNTY  
OFFICE OF LAW  
MARGARET ANN NOLAN  
COUNTY SOLICITOR



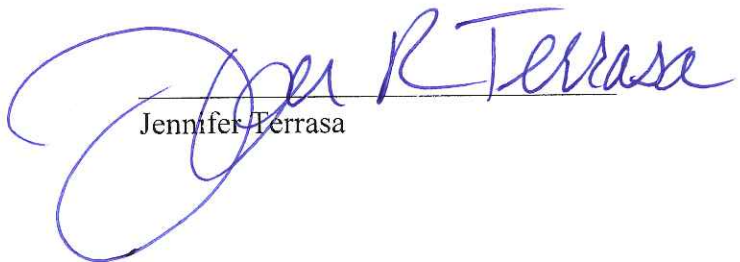
Greg Fox



Paul T. Johnson  
Deputy County Solicitor



Mary Kay Sigaty



Jennifer Terrasa